

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CIV 13-0524 JB/WPL
No. CR 11-2784 JB

JOHN S. WILLIAMSON,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

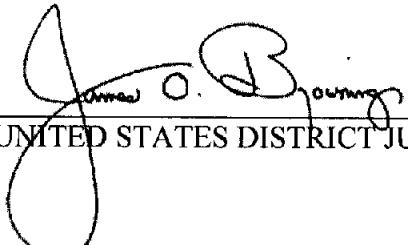
THIS MATTER comes before the Court under rules 4(b) and 11(a) of the Rules Governing Section 2255 Cases, on Defendant John S. Williamson's Motion to Set Aside, Vacate, or Correct Wrongful Conviction of Person in Federal Custody, filed June 5, 2012 (CV Doc. 1; CR Doc. 142). On February 12, 2013, the Court entered a Judgment in a Criminal case (CR Doc. 121) on Defendant John S. Williamson's conviction. On February 19, 2013, Williamson filed a notice of appeal (CR Doc. 125), and no order terminating the appeal appears on the dockets of either this Court or the Court of Appeals for the Tenth Circuit. *See* <https://ecf.ca10.uscourts.gov/>.

A petition under 28 U.S.C. § 2255 attacks the legality of a federal prisoner's detention. *See Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996). A district court may grant relief under § 2255 if it determines that "the judgment was rendered without jurisdiction, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack." 28 U.S.C. § 2255. "Absent extraordinary circumstances, the orderly administration of criminal justice precludes a district court from considering a § 2255 motion while review of the direct appeal is still pending." *United States v. Cook*, 997 F.2d 1312, 1319 (10th Cir. 1993); *cf. Wright v. Lansing*, No. 99-3335, 2000 WL 219965, at *1 (10th Cir. Feb.

25, 2000)(stating rule for § 2241 petition during military appeal); cf. United States v. De La Campa Rangel, 519 F.3d 1258, 1265-66 (10th Cir. 2008)(authorizing § 2255 motion during pending appeal). Williamson's § 2255 motion asserts no such extraordinary circumstances, and thus he is not entitled to relief at this time. See rule 4(b). The Court will dismiss the motion without prejudice.

Furthermore, under rule 11(a), the Court determines that Williamson has failed to make a substantial showing that he has been denied a constitutional right. The Court will therefore deny a certificate of appealability.

IT IS THEREFORE ORDERED that Defendant John S. Williamson's Motion to Set Aside, Vacate, or Correct Wrongful Conviction of Person in Federal Custody, filed June 5, 2013 (CV Doc. 1; CR Doc. 142) is dismissed without prejudice; a certificate of appealability is denied; and this civil proceeding is dismissed.



John S. Williamson
UNITED STATES DISTRICT JUDGE

Parties:

John S. Williamson
Federal Correctional Institution -- Florence
Florence, Colorado

Plaintiff pro se